

(c) *Requirements for procedures.* In establishing procedures under paragraph (b)(6) of this section, the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(d) *Annual reports*—(1) *In general.* In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of:

(i) The compliance of the swap execution facility with the Act; and

(ii) The policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

(2) *Requirements.* The chief compliance officer shall:

(i) Submit each report described in paragraph (d)(1) of this section with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to section 5h of the Act; and

(ii) Include in the report a certification that, under penalty of law, the report is accurate and complete.

§ 37.1501 Chief compliance officer.

(a) *Definition of board of directors.* For purposes of this part, the term “board of directors” means the board of directors of a swap execution facility, or for those swap execution facilities whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

(b) *Designation and qualifications of chief compliance officer*—(1) *Chief compliance officer required.* Each swap execution facility shall establish the position of chief compliance officer and designate an individual to serve in that capacity.

(i) The position of chief compliance officer shall carry with it the authority and resources to develop and enforce policies and procedures necessary to fulfill the duties set forth for chief compliance officers in the Act and Commission regulations.

(ii) The chief compliance officer shall have supervisory authority over all staff acting at the direction of the chief compliance officer.

(2) *Qualifications of chief compliance officer.* The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual disqualified from registration pursuant to sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(c) *Appointment, supervision, and removal of chief compliance officer*—(1) *Appointment and compensation of chief compliance officer.* (i) A swap execution facility's chief compliance officer shall be appointed by its board of directors or senior officer. A swap execution facility shall notify the Commission within two business days of appointing any new chief compliance officer, whether interim or permanent.

(ii) The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

(iii) The chief compliance officer shall meet with the board of directors at least annually and the regulatory oversight committee at least quarterly.

(iv) The chief compliance officer shall provide any information regarding the swap execution facility's self-regulatory program that is requested by the board of directors or the regulatory oversight committee.

(2) *Supervision of chief compliance officer.* A swap execution facility's chief compliance officer shall report directly to the board of directors or to the senior officer of the swap execution facility, at the swap execution facility's discretion.

(3) *Removal of chief compliance officer.*

(i) Removal of a swap execution facility's chief compliance officer shall require the approval of a majority of the swap execution facility's board of directors. If the swap execution facility does not have a board of directors, then the chief compliance officer may be removed by the senior officer of the swap execution facility.

(ii) The swap execution facility shall notify the Commission of such removal within two business days.

(d) *Duties of chief compliance officer.* The chief compliance officer's duties shall include, but are not limited to, the following:

(1) Overseeing and reviewing the swap execution facility's compliance with section 5h of the Act and any related rules adopted by the Commission;

(2) In consultation with the board of directors, a body performing a function similar to the board of directors, or the senior officer of the swap execution facility, resolving any conflicts of interest that may arise, including:

(i) Conflicts between business considerations and compliance requirements;

(ii) Conflicts between business considerations and the requirement that the swap execution facility provide fair, open, and impartial access as set forth in § 37.202; and;

(iii) Conflicts between a swap execution facility's management and members of the board of directors;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and the rules of the Commission;

(5) Establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(6) Establishing and following appropriate procedures for the handling, management response, remediation, re-testing, and closing of noncompliance issues;

(7) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct;

(8) Supervising the swap execution facility's self-regulatory program with respect to trade practice surveillance; market surveillance; real-time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities with respect to members and market participants (including ensuring compliance with, if applicable, financial integrity, financial reporting,

sales practice, recordkeeping, and other requirements); and

(9) Supervising the effectiveness and sufficiency of any regulatory services provided to the swap execution facility by a regulatory service provider in accordance with § 37.204.

(e) *Preparation of annual compliance report.* The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report that, at a minimum, contains the following information covering the time period since the date on which the swap execution facility became registered with the Commission or since the end of the period covered by a previously filed annual compliance report, as applicable:

(1) A description of the swap execution facility's written policies and procedures, including the code of ethics and conflict of interest policies;

(2) A review of applicable Commission regulations and each subsection and core principle of section 5h of the Act, that, with respect to each:

(i) Identifies the policies and procedures that are designed to ensure compliance with each subsection and core principle, including each duty specified in section 5h(f)(15)(B) of the Act;

(ii) Provides a self-assessment as to the effectiveness of these policies and procedures; and

(iii) Discusses areas for improvement and recommends potential or prospective changes or improvements to its compliance program and resources;

(3) A list of any material changes to compliance policies and procedures since the last annual compliance report;

(4) A description of the financial, managerial, and operational resources set aside for compliance with respect to the Act and Commission regulations, including a description of the swap execution facility's self-regulatory program's staffing and structure, a catalogue of investigations and disciplinary actions taken since the last annual compliance report, and a review of the performance of disciplinary committees and panels;

(5) A description of any material compliance matters, including non-compliance issues identified through a compliance office review, look-back,

internal or external audit finding, self-reported error, or validated complaint, and an explanation of how they were resolved; and

(6) A certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete.

(f) *Submission of annual compliance report.* (1) Prior to submission to the Commission, the chief compliance officer shall provide the annual compliance report to the board of directors of the swap execution facility for its review. If the swap execution facility does not have a board of directors, then the annual compliance report shall be provided to the senior officer for his or her review. Members of the board of directors and the senior officer shall not require the chief compliance officer to make any changes to the report. Submission of the report to the board of directors or the senior officer, and any subsequent discussion of the report, shall be recorded in board minutes or a similar written record, as evidence of compliance with this requirement.

(2) The annual compliance report shall be submitted electronically to the Commission not later than 60 calendar days after the end of the swap execution facility's fiscal year, concurrently with the filing of the fourth fiscal quarter financial report pursuant to § 37.1306.

(3) Promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the chief compliance officer shall file an amendment with the Commission to correct the material error or omission. An amendment shall contain the certification required under paragraph (e)(6) of this section.

(4) A swap execution facility may request from the Commission an extension of time to file its annual compliance report based on substantial, undue hardship. Extensions of the filing deadline may be granted at the discretion of the Commission.

(g) *Recordkeeping.* (1) The swap execution facility shall maintain:

(i) A copy of the written policies and procedures, including the code of ethics and conflicts of interest policies adopt-

ed in furtherance of compliance with the Act and Commission regulations;

(ii) Copies of all materials created in furtherance of the chief compliance officer's duties listed in paragraphs (d)(8) and (d)(9) of this section, including records of any investigations or disciplinary actions taken by the swap execution facility;

(iii) Copies of all materials, including written reports provided to the board of directors or senior officer in connection with the review of the annual compliance report under paragraph (f)(1) of this section and the board minutes or a similar written record that documents the review of the annual compliance report by the board of directors or senior officer; and

(iv) Any records relevant to the swap execution facility's annual compliance report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are

(A) Created, sent, or received in connection with the annual compliance report and

(B) Contain conclusions, opinions, analyses, or financial data related to the annual compliance report.

(2) The swap execution facility shall maintain records in accordance with § 1.31 and part 45 of this chapter.

(h) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, authority to grant or deny a swap execution facility's request for an extension of time to file its annual compliance report under paragraph (f)(4) of this section.